

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ROOSEVELT BARNES §
v. § CIVIL ACTION NO. 9:09cv68
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING PETITIONER'S SECOND MOTION FOR RELIEF FROM JUDGMENT

The Petitioner Roosevelt Barnes, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the computation of his sentence. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After reviewing Barnes' petition, the Magistrate Judge issued a Report recommending that the petition be dismissed because it was successive, and Barnes did not show that he had received permission from the Fifth Circuit Court of Appeals to file a successive petition. Barnes did not file objections to the Report, and the petition was dismissed on September 22, 2009.

On February 16, 2010, Barnes filed a motion for relief from judgment, arguing that his petition was not successive because he was challenging the denial of time credits in case no. 17,646, whereas his previous habeas petition challenged cause no. 17,789. The Magistrate Judge determined that this claim lacked merit because Barnes was not convicted in cause no. 17,646, and so could not challenge that cause through habeas corpus. Instead, the sentence he is serving is in cause no. 17,789, and so any time credits to which he was entitled would necessarily be applied to that sentence. Barnes' first motion for reconsideration was denied on September 10, 2010.

Two weeks later, on September 24, 2010, Barnes filed a second motion for reconsideration. This motion makes no mention of the successiveness issue, but instead appears to argue that Barnes' original habeas petition was decided incorrectly, despite the fact that the dismissal of this petition has been upheld by the Fifth Circuit through the denial of a certificate appealability.

On October 5, 2010, the Magistrate Judge issued a Report recommending that Barnes' second motion for reconsideration be denied. The Magistrate Judge also suggested that Barnes be warned that sanctions could be imposed upon him should he continue to file frivolous motions in this case, including frivolous motions for reconsideration.

A copy of this Report was sent to Barnes at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations, and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the Petitioner's second motion for relief from judgment and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Petitioner's second motion for relief from judgment (docket no. 16) is hereby DENIED. Finally, it is

ORDERED that the Petitioner Roosevelt Barnes is hereby WARNED that the further filing of frivolous motions in this case, including but not limited to frivolous motions for relief from judgment, could result in the imposition of sanctions, including monetary or other sanctions, under Rule 11, Fed. R. Civ. P.

So **ORDERED** and **SIGNED** this **31** day of **January, 2011**.



Ron Clark, United States District Judge